IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.247 OF 2004

Lilawati Motilal Waghmode ...Appellant
Vs.
Motilal Maruti Waghmode & Anr. ...Respondents

Mr.Sandip S.Jinsiwale for the Appellant
Mr.G.S.Godbole with Ms Parasnis for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: MAY 5,2006.

P.C.:

1. Heard Advocates for the parties. With a view to ascertain the possibility of both the parties arriving at amicable settlement, the Appellant and the Respondent No.1 were directed to remain present before me in the chamber. After talking to the parties, I found that amicable settlement was not possible and therefore the Appeal was taken up for hearing.

2. The Appellant is the wife of the Respondent No.1. The Trial Court dismissed the divorce Petition filed by the Respondent No.1. The Appellate Court has reversed the decree and has passed a decree of divorce under section 13(1) (i) of the Hindu Marriage Act, 1955 by holding that the Appellant had voluntary sexual intercourse with Respondent No.2 after solemnisation of her marriage with the Respondent No.1.

3. The learned Advocate for the Appellant submitted that the Appellate court has relied upon only the evidence of the married daughter of the Appellant and except for evidence of the said daughter, there is no evidence of the allegations against the Appellant and the Respondent No.2. He submitted

that there are other five children born to the Appellant after her marriage with the Respondent No.1 and none of them have deposed against the Appellant. The daughter who was examined by the Respondent No.1 deposed that she had more love and affection to her father. He, therefore, submitted that the Appellate court could not have accepted the testimony of the said interested witness and could not have passed a decree of divorce by accepting the very serious allegations made by the Respondent No.1 against the Appellant and the Respondent No.2. The learned Advocate for the Respondents supported the impugned Judgment and Decree.

4. I have considered the submissions. It will be necessary to refer to the finding of the Appellate Court in paragraph Nos.10 and 11 the Appellate Court had held thus :

"10. The daughter of both the spouses is the star witness in this matter. When she gave her evidence before the learned trial Judge on 9-1-1997 she was 20 years old. According to the Appellant, Respondent No.1 begin to keep illicit relations with Padmakar Shetti and Respondent No.2 after birth of 5th child. At that time admittedly, P.W.No.2 Sou.Snehlata Bhim Nadgam, the daughter of the Appellant was residing with her mother in the same house. Therefore, she had an opportunity to witness the things happening in her house. Her father had left the house in

1990. **P.W.2 Sou.Snehlata has deposed that she got married about 1 1/2 years ago in the month of January 1994 when she was residing with her father at Solapur. She further deposes that she was residing with Respondent No.1 from 1990 to 1993. She goes on to depose that her father was not residing with them during the period from 1990 to 1993. Respondent No.2 was residing with them during the period from 1990-1993. She has specifically deposed that Respondent Nos.1 and 2 were residing as husband and wife in their house. She has also deposed that she had seen Respondent No.1 sleeping with Respondent No.2.** When she told Respondent No.2 to behave properly, Respondent No.2 assaulted her. In the further evidence, she deposes that Respondent No.1 had illicit relations with Respondent No.2 and due to the immoral conduct of Respondent No.1 her father left the house in the year 1990 and that she also went to the house of her father because of immoral conduct of Respondent No.1

11. The aforesaid evidence of P.W.2 Sou.Snehlata is minutely examined. the appreciation makes it clear that although her father had left the house, she continued to reside with her mother. In the year 1997 she was 20 years old. **Obviously, in the year 1990 she would be 13 years old. She had attained**

the age of understanding. She was residing with her mother in the same house. She had an opportunity to witness the things happening in the four walls of the house, when she says that her mother and Respondent No.2 were sleeping together and that they were residing in the house as husband and wife, it tells volume. She has also stated in clear terms that Respondent No.1 had illicit relations with Respondent No.2. This evidence of P.W.2 Sou.Snehlata is very clear and clinching. It is true that she left her mother and went to reside with her father. In this regard she says that she left the house of her mother because of immoral conduct of her mother. This was quite natural. She was a growing girl. She had an expectation in her future life. She was also to be got married. Obviously, she must have though it fit to abandon the shelter of her mother in order to protect herself from the immorality committed by her mother. This conduct of P.W.2 Sou.Snehlata was quite natural. It is true that her father spent money for celebrating her marriage. It was his legal duty to spend money for the marriage of his daughter. He had discharged the said duty. On the basis of this obligation it cannot be said that as her father spent money for celebrating her marriage she came forward for giving false evidence. On the contrary

her evidence is clear and quite natural. There is absolutely no reason to discard her evidence."

(Emphasis supplied)

5. I have also perused the notes of evidence of the said witness. The Appellate Court has correctly reproduced what has been stated by the P.W.No.2 in her evidence. P.W.No.2 was married when she has deposed as to exactly what used to transpire in the house between the period from 1990 to 1993. The Appellate Court has found that the age of the said witness in the year 1990 was 13 years and she had attained the age of understanding. In my view, there was no error committed by the Appellate Court if the testimony of the married daughter of the Appellant was accepted for passing the decree against the Appellant. Merely because the witness has stated that she had more love and affection for the father is no ground to discard the version of the said witness. There is no reason why the married daughter will depose falsely against her own mother. It is argued that the Respondent No.1 had spent some amount of money on the marriage of the said daughter. The Respondent No.1 being the father was always under obligation to do so. It is impossible to come to the conclusion that merely because the Respondent No.1-father has spent money on the marriage of the said daughter, she has deposed in his favour. The said evidence was of a sufficiently grown up daughter who had deposed before the court on oath regarding scenario in her

house and the relationship between the Appellant and the Respondent no.2. It is pertinent to note that the Appellant has not examined any of her children in support of her case. The evidence of the daughter has been rightly accepted as trustworthy by the Appellate Court. The finding on issue of adultery is a finding of fact based on pure appreciation of oral evidence. No interference is called for with the said finding.

6. Another grievance made by the Advocate for the Appellant is regarding failure of the court to pass an order under section 25 of the Hindu Marriage Act, 1955. As of today, there is no material on record for determining the issue regarding quantum of permanent alimony. On plain reading of section 25(1) of the said Act of 1955, it is always open for the Appellant to apply to the concerned Court for grant of relief under section 25 of the said Act of 1955 even after the grant of divorce.

7. Hence, I pass the following order :

i) Second Appeal is dismissed with no order as to costs. Decree of the divorce is confirmed.

ii) It is open for the Appellant to apply under section 25(1) of the Hindu Marriage Act, 1955 before the appropriate court. If such application is made by the Appellant, it will be

decided on its own merits as expeditiously as possible.

Judge.